

ESTTA Tracking number: **ESTTA505655**

Filing date: **11/15/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91206966
Party	Defendant Armada Health Care, LLC
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Date	11/15/2012
Attachments	Motion_for_Judgment.pdf (11 pages)(1108342 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ARMADACORP CAPITAL, LLC)	
)	
Opposer,)	Opposition No. 91206966
)	
v.)	
)	
ARMADA HEALTH CARE, LLC)	
)	
Applicant.)	
)	


MOTION FOR JUDGMENT ON THE PLEADINGS

For the reasons set forth in the accompanying brief, Applicant hereby moves for judgment on the pleadings to dismiss the Opposition to Applicant's application to register Armada Specialty Pharmacy Summit in Class 35 and in Class 41.

Date: November 15, 2012

Respectfully submitted,

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By: 
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ARMADACORP CAPITAL, LLC)	
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Opposer,)	Opposition No. 91206966
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v.)	
)	
ARMADA HEALTH CARE, LLC)	
)	
Applicant.)	
)	

BRIEF IN SUPPORT OF APPLICANT'S
MOTION FOR JUDGMENT ON THE PLEADINGS

Applicant's motion for judgment on the pleadings dismissing the Opposition with respect to Applicant's application to register Armada Specialty Pharmacy Summit in Class 35 and Class 41 should be granted because, as the undisputed facts show, there is no reasonable basis for Opposer's opposition to the registration of Applicant's Armada Specialty Pharmacy Summit trademark. There can be no dispute as to the description of Applicant's services and Opposer's services as set forth in their respective trademarks and to the dissimilarities between Applicant's mark and each of Opposer's three marks.

THE MARKS AND THEIR SERVICES

Applicant's Mark:

Armada Specialty Pharmacy Summit (Serial No. 854864750)

Services

- Class 35: "Arranging and conducting business conferences."

- Class 41: “Educational services, namely, conducting conferences in the field of pharmaceuticals.”

Opposer’s Marks:

Armada (Registration No. 3042271)

Services

- Class 35: “Insurance claims auditing services; managing the operations of insurance agencies and brokers on an outsourcing basis; tracking and monitoring insurance compliance; cost management for the health benefit plans of others; cost management for the health care benefit plans of others; serving as a human resources department for others; health care cost containment; health care cost review; health care utilization and review services; managed care services, namely, electronic processing of health care information.”
- Class 36: “Dental health insurance underwriting and administration; electronic processing of insurance claims and payment data; insurance administration; insurance brokerage; insurance claims administration; insurance claims processing; insurance consultation; insurance underwriting services for all types of insurance; life insurance underwriting; medical insurance underwriting; underwriting insurance for pre-paid health care; administration of employee benefit plans; administration of employee welfare benefit plans; administration of pre-paid health care plans; organizing and administration of pre-paid health care plans.”

ArmadaCare (Registration No. 3341346)

Services

- Class 35: “Cost management for the health benefit plans of others; cost management for the health care benefit plans of others; health care cost containment; health care cost review; health care utilization and review services; managed care services, namely, electronic processing of health care information; physician referrals; appointment scheduling services.”
- Class 36: “Administration of employee benefit programs; administration of employee welfare benefit plans; administration of prepaid health care plans; medical insurance underwriting and administration; underwriting insurance for pre-paid health care; organizing pre paid health care plans.”
- Class 44: “Health care in the nature of preferred provider organizations; managed health care services; health care; providing health information; providing health care information by telephone; remote monitoring of data indicative of the health or condition of an individual; monitoring files and records concerning the medical condition of individuals; monitoring personal medical history records and files; medical information.”

ArmadaHealth (Registration No. 3589038)

Services

- Class 35: “Cost management for the health benefit plans of others; cost management for the health care benefit plans of others; health care cost containment; health care cost review; health care utilization and review services; managed care services, namely, electronic processing of health care information.”
- Class 36: “Administration of employee benefit programs; administration of employee

welfare benefit plans; administration of prepaid health care plans; reinsurance underwriting; medical insurance underwriting and administration; underwriting insurance for pre paid health care; organizing pre paid health care plans; insurance and employee health benefits risk financing, consultation and management.”

- Class 44: “Managed health care services; health care in the nature of preferred provider and health maintenance organizations.”

THE SERVICES, LOOK, SOUND, CONNOTATION, AND
COMMERCIAL IMPRESSION OF THE MARKS ARE DISSIMILAR

Class 35 Services

The key DuPont factors for the likelihood of confusion -- the similarity of the marks in their entireties as to appearance, sound, connotation and commercial impression; the similarity and nature of the services as described in an application or registration; and the similarity of trade channels -- simply do not exist.

None of the Opposer’s three marks refer to or involve “conducting business conferences,” the description of Applicant’s Class 35 services. In fact, other than the word “and,” none of the words in Applicant’s description of its Class 35 services appear in any of Opposer’s marks.

Insofar as the use of the word Armada is concerned, Opposer does not have a monopoly on or the exclusive right to the use of that word. Use of that word together with the other words of Applicant’s mark is not and cannot be reasonably adjudged to be identical to, an imitation of, or to so resemble Opposer’s mark as to be likely, when used in connection with Applicant’s services, to cause confusion or mistake or to deceive.

There are numerous other registered trademarks that use the word Armada, including its use by others than Opponent for Class 35 services, i.e., Armada Supply Chain Solutions

(Registration No. 3665461) and Entrepreneurial Armada (Registration No. 3871922). It is part of Opposer's name, and it is also part of Applicant's name. It is a standard dictionary word. The customers of Applicant know that Armada is the first word of Applicant's name, and the customers of Opposer know that Armada is the first portion of the first word of Opponent's name. Moreover, the additional words of Applicant's mark, Specialty Pharmacy Summit, clearly differentiate it from each of Opponent's marks, *i.e.*, the word Armada by itself or with the word Care or the word Health. Care and/or Health do not look like or, when pronounced, sound like, connote, or create the commercial impression of Specialty Pharmacy Summit.

Those who seek someone to arrange and conduct a business conference, Applicant's Class 35 services, know they are not -- and have no reason at all to believe they are -- obtaining or seeking insurance claims auditing services, cost management for the health benefit plans of others, electronic processing of health care information, or any of the other Class 35 services identified in Opposer's marks. Persons seeking professional services such as those of Applicant or Opposer do so with care, not on impulse. They can easily distinguish a business conference from insurance claims auditing services or any of Opponent's Class 35 services.

None of Opposer's services in Classes 36 and/or 44 refer to or involve "arranging and conducting business conferences," or anything that can reasonably be said to be confusingly similar thereto.

Class 41 Services

Applicant's Class 41 services are "Educational conferences, namely conducting conferences in the field of pharmaceuticals."

Opposer has no mark in Class 41. None of Opposer's three marks refer to or involve "educational conferences, namely conducting conferences in the field of pharmaceuticals."

Other than the word “namely,” none of the other words in Applicant’s description of its Class 41 services appear in any of Opposer’s marks. Moreover, none of the services identified in its marks can be confused with or are similar to “educational conferences ...in the field of pharmaceuticals.” Persons seeking insurance claims auditing services, cost management for the health benefit plans of others, electronic processing of health care information or any of the other services identified in Opposer’s marks have no reason to believe they will be attending an “educational conference ... in the field of pharmaceuticals.”

None of Opposer’s Class 35 services -- all of which involve various aspects of services related to insurance, cost management, managed care service and related services -- provide a reasonable basis for claiming that Applicant’s Class 41 services, “educational conferences, namely conducting conferences in the field of pharmaceuticals,” provide a basis for consumer confusion with respect to Opposer’s Class 35 services.

The same is true for Opposer’s other services.

Opposer’s Class 36 services consist of services involving insurance and benefit plans, e.g., “dental health insurance underwriting and administration,” “insurance brokerage,” “life insurance underwriting,” “medical insurance underwriting,” “administration of employee benefit plans” (Registration No. 3042271); “underwriting insurance for pre-paid health care;” “organizing pre-paid health care plans” (Registration No. 3341346); and “insurance and employee health benefits risk financing, consultation and management” (Registration No. 3589038). There is no reasonable basis for claiming that any of Opposer’s Class 36 services may be considered similar or related to Applicant’s services. The same is true of Opposer’s Class 44 services, e.g., “managed health care services” in both Registration No. 3341346 and Registration No. 3589038.

None of Opposer's services identified in any of its three marks refer to or can be said to indicate in any respect Applicant's Class 41 services, "educational conferences, namely conducting conferences in the field of pharmaceuticals." "Because the parties do not offer competing services, there is no similitude." International Ass'n of Machinists and Aerospace Workers, AFL-CIO v. Winship Green Nursing Center, 103 F.3d 196, 204 (1st Cir. 1996).

There is no reasonable basis for claiming (let alone concluding) that those who seek Opposer's services -- *e.g.*, insurance claims auditing, dental or medical insurance underwriting, or employee health benefits risk financing or managed health care services -- are seeking or believe they will also be attending a pharmaceutical educational conference. Purchasers of Applicant's services and purchasers of Opposer's services know the difference between insurance or health benefit plan issues, on the one hand, and, on the other, educational conferences in the field of pharmaceuticals. They are seeking professional services. They are not unsophisticated purchasers. There is no valid basis for the position that Applicant's mark in respect of its services in Class 41 could be confused with Opposer's services in any of the three Classes of services -- 35, 36 and 44 -- covered by Opposer's marks.

Again, additionally, the words Specialty Pharmaceutical Summit clearly differentiate Applicant's mark from Opposer's marks, *i.e.*; Armada on its own or with Care or Health. Care and/or Health do not look like, sound like, connote, or create the commercial impression of Specialty Pharmacy Summit.

CONCLUSIONS

Class 35 Services

By reason of (i) the incontrovertible differences between Applicant's Class 35 services (arranging and conducting business conferences) and Opposer's Class 35 services (various

matters relating to insurance, health care, benefits and costs) as well as the differences between Applicant's Class 35 services and Opposer's two other Classes of services, *i.e.*, Class 36 services (involving insurance administration, underwriting and related services), and Class 44 services (services involving managed health care); (ii) the incontrovertible differences in meaning, sound, connotation, and appearance between the words Specialty Pharmacy Summit and the words Health or Care; and (iii) Opposer's lack of exclusive right to use the word Armada -- all facts discernable from the pleadings -- , Opposer's opposition to the registration of Armada Specialty Pharmacy Summit in Class 35 should be dismissed.

Class 41 Services

By reason of (i) Applicant's mark in Class 41 and the fact that Opposer has no mark in Class 41; (ii) the incontrovertible differences between Applicant's Class 41 services and Opposer's services in Classes 35, 36 and 44; (iii) the core and incontrovertible differences in meaning, sound, connotation, and appearance between the words Specialty Pharmacy Summit and the words Health or Care; and (iv) Opposer's lack of exclusive right to use the word Armada -- all facts discernable from the pleadings -- Opposer's opposition to the registration of Armada Specialty Pharmacy in Class 41 should be dismissed.

Date: November 15, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this ___ day of November, 2012, a copy of the foregoing Motion for Judgment on the Pleadings and the accompanying Brief in Support of Applicant's Motion for Judgment on the Pleadings were served by mailing same first class, postage prepaid, to:

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